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## **COMMENTARY**

This chapter relates to the transmission and receipt of documents and copy/certificate requests received by mail, in person, or by facsimile transmission. To review information regarding procedures relating to the transmission, receipt, and processing of electronically submitted documents and copy requests please refer to Chapter XVII of this Guide entitled “SOSDirect—Electronic Business Services.”

### **TRANSMITTING DOCUMENTS TO THE SECRETARY OF STATE**

The mailing address for the Corporations Section is:

Corporations Section  
Business & Public Filings Division  
Office of the Secretary of State  
P.O. Box 13697  
Austin, Texas 78711-3697

If a document is to be delivered to the office in a manner other than through the U.S. Post Office, the envelope may be addressed or delivered to the following address:

Office of the Secretary of State  
Corporations Section  
James Earl Rudder State Office Building  
1019 Brazos  
Austin, Texas 78701

### **EXPEDITED HANDLING**

If a document, other than a trademark document, must be reviewed or filed in an extremely expeditious manner, you may request “expedited handling.” The fee for this service, in accordance with Section 405.032 of the Texas Government Code, is \$25 per document and may be included in one check with the filing fee for the document. You must clearly indicate your request for expedited handling at the time of submission, and include your name and a telephone number where you may be reached between the hours of 8 a.m. and 5 p.m. so we can contact you. These documents are given priority processing. Generally, an expedited handling document is processed by the close of the next business day following the date of receipt of the document. If the expedited handling document is filed and a fax number is provided, then a certificate of filing, if applicable, will be sent to the fax number provided. If the expedited handling document cannot be filed, then we will attempt to contact the submitter at the telephone number provided regarding the reasons for rejection prior to mailing the notice of rejection. We will return the document in the normal manner.

If you desire to hand carry a filing to the office, you should bring the document to Room 105 of the James Earl Rudder Building. The \$25 expedited handling fee also applies to an expedited handling document hand delivered to our office location.

## **FACSIMILE TRANSMISSION AND REPRODUCTION FILINGS**

The Texas Miscellaneous Corporation Laws Act, article 1302-7.07; the Texas Revised Limited Partnership Act, article 6132a-1, section 13.04; and the Texas Revised Partnership Act, section 3.08(b)(12), eliminate the requirement to file originally signed documents. These statutes provide for the filing of any photostatic or facsimile copy of a signed instrument required or authorized to be filed with the secretary of state under a provision of the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, the Texas Limited Liability Company Act, the Texas Revised Limited Partnership Act, and the Texas Revised Partnership Act. In addition, Texas Business & Commerce Code, section 36.18, authorizes the secretary of state to accept for filing photographic or similarly reproduced copies of originally signed assumed name documents.

The Corporations Section maintains four plain paper facsimile machines on a rotary line for the receipt of documents and messages. The facsimile number is (512) 463-5709. If a document is to be submitted to the office by facsimile transmission, it requires either the simultaneous receipt of the filing fee or the delivery of any applicable fees by the close of the same business day. If the applicable fees are not received on the same date as the transmission, the document will be returned without filing. Please refer to the following section entitled, "Payment of Filing Fees," for your payment options. Documents faxed on a Saturday, Sunday, state holiday or after business hours (8 a.m. to 5 p.m., Central Time) will be deemed received on the next business day or when actually received by an employee of the secretary of state.

## **PAYMENT OF FILING FEES**

### **Available Options**

Filing fees may be paid by personal check, firm check, your client's check, cashier's check, money order, credit card or LegalEase<sup>SM</sup> debit card. Handling cash is time consuming and may delay processing of your documents. Therefore, we ask that you utilize a payment option other than cash even if you choose to hand deliver a document to the office.

The filing fee and expedited handling fee for a single document may be included in the same check or financial transaction. We suggest, however, that you not combine the filing fees for several documents in one check. If one document is rejected while the others are filed, it will be necessary to refund the unused portion of the check, which requires three to four weeks to process.

Checks and money orders should be made payable to the secretary of state. Any checks made payable to the secretary of state must be payable through a U.S. bank or financial institution.

### **Credit Card**

Fees payable to the secretary of state may be paid with a current, valid Visa<sup>®</sup>, Discover<sup>®</sup>, or MasterCard<sup>®</sup>. Fees paid by credit card are subject to a statutorily authorized convenience fee (currently 2.7%) of the total fees incurred. The convenience fee is assessed per credit card transaction.

If you wish to utilize the credit card payment option, you must submit or transmit by facsimile a completed [credit card payment form](#) provided by this office or provide the following information in writing:

- (1) the credit card to be used (i.e., Visa®, Discover®, or MasterCard®);
- (2) the account number;
- (3) the expiration date;
- (4) the signature of the cardholder;
- (5) the sum of all fees authorized to be charged; and
- (6) a convenience fee equal to 2.7% of the total amount of fees incurred in the transaction.

The convenience fee, as well as the designation of acceptable credit cards, is subject to change in accordance with existing contracts between this office, the Treasury Division, Comptroller of Public Accounts, and relevant financial institutions.

### **LegalEase<sup>SM</sup>**

LegalEase<sup>SM</sup> is a guaranteed electronic payment method that facilitates the payment of fees to governmental agencies. The service is offered by Frost Bank of San Antonio. To utilize the service a customer maintains funds in an account with Frost Bank and is issued a debit card. The customer provides the card number when filing documents or paying for services received from the secretary of state. The cost is charged to the customer's account and payment is made by Frost Bank to the secretary of state. Information about LegalEase<sup>SM</sup> is not available from the secretary of state but may be obtained by calling Frost Bank at (800) 253-5749.

### **Dishonored Payments**

If a check, credit card, or debit card is dishonored when presented for payment, the secretary of state will treat the document as if no filing fee had been tendered and will take all action authorized by law. This action may include revocation of the filing of the document, involuntary dissolution of the corporation, limited liability company, or limited partnership or revocation of the certificate of authority of the subject entity.

## **FILING DATES**

This office files all documents, other than trademark documents and entity name reservations/registrations, as of the date of receipt. We cannot take into account the date of the postmark. If a document is found deficient and returned, the filing date upon resubmission will be the date the corrected document is received.

Although our facsimile machines receive transmissions without the need of an attendant, the receipt of a faxed document will be the day the document is stamped "received" by an employee of the secretary of state. Documents faxed on a Saturday, Sunday, state holiday or after business hours (8 a.m. to 5 p.m., Central Time) will be deemed "received" on the next business day or when actually received by an employee of the secretary of state.

We cannot hold documents to be filed on a future date. If a future filing date is desired, the later effective date or later effective condition provisions of the appropriate statute should be utilized. Please refer to the section entitled, "Delayed Effective Date," in this chapter for more information.

### **RETURNING DOCUMENTS NOT FILED**

When a document does not conform to law, the document and the checks submitted in payment of the filing fee will be returned to the remitter with a letter stating the reason for rejection. Due to the large number of rejected documents, we will not hold deficient documents or fees pending receipt of corrections or additional fees. This office does maintain however a copy of the rejection letter sent to the remitter.

### **INSPECTION OF RECORDS**

All of our records are public records and may be duplicated or inspected. To inspect records maintained in hard copy form, you must present an application to review documents to the receptionist on the first floor of the James Earl Rudder Building. The application must state the name of the business organization you wish to review. All of our files are indexed by name of the business organization or by file number; some records may be accessed by the names of the individuals involved with the entity.

Documents filed with the secretary of state after August 1, 2001, are scanned and imaged into the computer system used by the secretary of state. The secretary of state provides computer terminals in its public reception area on the first floor of the James Earl Rudder Building from which a person can access and view the imaged documents on file for a business organization.

### **RECORD CERTIFICATION AND COPIES OF DOCUMENTS**

You may obtain certificates or copies of any of our records by making a written or telephone request to the Corporations Section. The Office of the Secretary of State is in the process of converting paper documents filed prior to August 1, 2001, to electronic images. During this process we also verify information maintained on our computer system relating to such documents in order to provide more accurate information. This does however take some time and may cause a delay in processing a copy request. Currently, the processing of your order may take from 5 to 7 business days. Once completed, your order is returned by regular mail.

The fee for plain copies is 10¢ per page. Certified copies cost \$1.00 per page plus \$10.00 for the certificate. Certificates of status (existence) and other certificates of fact cost \$10.00 per certificate. A certificate of status (existence) that includes an extract list of all filings relating to the business organization may be obtained for \$25.00. We can transmit copies and certificates via facsimile for a charge of \$2.00 per page. A cover sheet is used but is not counted for purposes of assessing the charge. Facsimile transmissions of certificates and certified copies are subject to the \$10 fee for expedited handling.

Since copy costs are based on a per page charge, the amount due cannot be determined until the file is pulled and the copies made. To facilitate copy and certifying requests, you may charge the costs to a credit card.

Our Records Center is responsible for producing copies and certificates. They may be reached by telephone at: (512) 463-5578, or Fax (512) 463-5643. Correspondence should be addressed to:

Corporations Section  
Business & Public Filings Division  
Secretary of State  
P.O. Box 13697  
Austin, Texas 78711-3697

### **Expedited Certificates or Certified Copies**

Certificates of fact and certified copies of our records may be processed in an expeditious manner by placing your request in person with the receptionist on the first floor of the James Earl Rudder Building. The fee for expedited handling is \$10 per certificate.

If you are unable to make your request in person, requests for certified copies of documents or certificates may be ordered and sent via facsimile transmission. Orders for certificates of status (existence) or fact to be sent by fax will be processed as an expedited handling request within two (2) business days of receipt of the order. Orders for certified copies to be processed on an expedited basis will be given priority in processing over other order requests. In addition to the standard charges for the certified copies or information produced, faxes are subject to the expedited handling fee of \$10 per certificate ordered plus the fax charge of \$2.00 per page.

### **SECRETARY OF STATE ON-LINE ACCESS**

The Office of the Secretary of State has implemented a web access self-service system called SOSDirect. SOSDirect provides subscribers and temporary users with up-to-date, on-line computer access to a variety of information maintained by the Office of the Secretary of State. SOSDirect allows access to information regarding corporations, limited partnerships, limited liability companies, registered limited liability partnerships, and assumed names for those entities filed with the secretary of state, state trademarks and state UCC financing statements. SOSDirect provides for the electronic filing of UCC documents and certain business organization documents. SOSDirect allows users to view copies (when images are available) of filed documents, print copies of such documents, and generate certificates of fact relating to those documents. SOSDirect also permits users to order copies and certificates relating to business and UCC records. For more information on SOSDirect and the business services provided through the system, please refer to Chapter XVII of this Guide entitled "SOSDirect—Electronic Business Services."

### **TELEPHONE INFORMATION**

We provide what information we can over the telephone. Generally, information not readily accessible is available by requesting copies of the source document. We cannot retrieve source documents and read the information over the telephone.

Please direct your calls to the following numbers:

Name Availability	(512) 463-5555
Registered Office/Agent	(512) 463-5555
General Corporate Information	(512) 463-5555
including officers/directors (by corporation or by individual name) and existence	
Limited Partnership Information	(512) 463-5555
Limited Liability Company Information	(512) 463-5555
Assumed Name Information	(512) 463-5555
Registered Limited Liability Partnerships	(512) 463-5555
Designations of Agent for Financial Institutions	(512) 463-5555
Administrative Staff	(512) 463-5586
Copies/Certificates	(512) 463-5578
Trademarks	(512) 463-5555
SOSDirect	(512) 475-2755
Forms Only	(900) 263-0060

Information requests on specific business entities or general information requests also may be directed to this office electronically by contacting [corpinfo@sos.state.tx.us](mailto:corpinfo@sos.state.tx.us).

### **ENTITY NAME DETERMINATIONS**

Prior to submitting a document for filing, you may check the acceptability of the proposed name by calling (512) 463-5555. The proposed name is searched by computer and preliminary advice is given. A final decision on the acceptability of a particular name is never made until a document using the name is submitted for filing. Do not make financial expenditures or execute documents utilizing the name based upon this preliminary clearance. You should wait to use a proposed name until you have received a certificate evidencing acceptance and filing of that name.

The secretary of state is checking a proposed name only against active corporate, limited liability company, and limited partnership names. The pre-clearance of a proposed name or the issuance of a certificate of name reservation or certificate of formation under a name does not authorize the use of the name in violation of another person's rights. It is recommended that a person proposing to do business under a particular name make as thorough a search as possible to reduce the risk of possible common law trade name infringement or trademark infringement. A search may be necessary of federal and state trademark filings, assumed name certificates filed with the county and with the secretary of state, telephone directories, trade journals, and other sources. Information on federal trademark registrations may be obtained from the United States Patent and Trademark Office website at [www.uspto.gov/main/trademarks.htm](http://www.uspto.gov/main/trademarks.htm) and from libraries designated as Patent and Trademark Depository Libraries (PTDL). A list of PTDLs in Texas is located in [Appendix B](#) of this Guide.

## RESERVATION OF AN ENTITY NAME

**Application for Name Reservation:** Pursuant to the provisions of article 2.06, Texas Business Corporation Act; article 2.04A, Texas Non-Profit Corporation Act; article 2.04, Texas Limited Liability Company Act; and section 1.04, Texas Revised Limited Partnership Act, the proposed name of an entity or the name of an out-of-state entity proposing to qualify with the secretary of state to transact business in the state may be reserved for a period of 120 days to hold the name for the applicant pending submission of the applicable document. There is no provision for renewal of a name reservation; consequently, an application for the reservation of the same name will not be accepted for filing until the previously filed reservation has expired or been terminated.

**Name reservations filed under one statute cannot be used for, or transferred to, filings made under any other statute.** For example, a corporate name reservation cannot be used as a basis for filing a certificate of limited partnership under the reserved name. A certificate of limited partnership under such name would not be filed and would be rejected on the grounds that it was deceptively similar to the corporate name reservation.

The secretary of state has promulgated a [form](#) for the reservation of an entity name; use of the form is permissive. The filing fee for a reservation for a corporate name is \$40.00. The filing fee for a reservation for a limited liability company name is \$25.00. The filing fee for the reservation of a limited partnership name is \$50.00.

**Name Reservation:** A name reservation may be transferred to any other person by filing with the secretary of state two copies of a notice of such transfer specifying the name and address of the transferee and executed by the applicant for whom the name was reserved. The filing fee for a transfer of a corporate name is \$15.00, the transfer of a limited liability company name reservation is \$10.00, and the transfer of a limited partnership name is \$50.00.

**Termination Of Name Reservation:** A registrant may terminate the reservation of a name prior to the expiration of the reservation period by filing an application to cancel the name reservation. The secretary of state has not promulgated a form for the purpose of terminating a name reservation; however, an application to cancel the name reservation should be signed by the registrant and should include the following information: (1) the name reserved by the registrant; and (2) a statement that the registrant seeks to terminate the reservation prior to the expiration of its term. The filing fee for the cancellation of a corporate name reservation is \$15.00, cancellation of a limited partnership name reservation is \$25.00, and the cancellation of a limited liability company name reservation is \$10.00.

## PRE-CLEARANCE OF DOCUMENTS

We will review the draft of a document proposed to be filed with this office and advise you of the probable filing disposition in writing. There is a \$50.00 statutory fee for pre-clearing limited partnership documents. For other documents, there is no charge for reviewing the draft, unless you request expedited handling.

## **FORMS PROMULGATED BY THE SECRETARY OF STATE**

As authorized by the several statutes which we administer, the secretary of state promulgates certain forms which are designed to meet statutory requirements and facilitate filings with this office; use of the forms is permissive. The index of forms lists all available forms and the form numbers. The forms may be obtained by facsimile or by mail by calling 1 (900) 263-0060. (There is a charge of \$1.00 per minute for ordering forms on this line.) Also, copies of these forms may be obtained at the secretary of state's web site at <http://www.sos.state.tx.us/corp/forms.shtml>. All forms are drafted to meet minimum statutory filing requirements; no sample form can meet the particular requirements of a specific transaction.

## **ACKNOWLEDGMENT COPIES**

Pursuant to the provisions of article 7.08, Texas Miscellaneous Corporation Laws Act and section 2.07, Texas Revised Limited Partnership Act, the secretary of state will not reject the filing of a document required or authorized to be filed in duplicate with the secretary of state solely for the failure to provide a duplicate copy of the instrument to be filed. However, the secretary of state will not provide or affix a file-stamped copy of the document to a letter or certificate acknowledging the filing of the document unless a duplicate copy is provided for such purpose by the remitter at the time of submission of the document.

## **DELAYED EFFECTIVE DATE**

Under the provisions of article 10.03 of the Texas Business Corporation Act, section 2.12 of the Texas Revised Limited Partnership Act, article 9.03 of the Texas Limited Liability Company Act, and article 1396-10.07 of the Texas Non-Profit Corporation Act, business organizations and non-profit corporations may choose to delay the effectiveness of filing of certain documents. The effectiveness of the filing may either be delayed to a subsequent date and time no later than 90 days from the date of submission or its effectiveness may be conditioned upon the occurrence of a future event within 90 days of the submission of the document. Please refer to the above referenced articles for more specific information regarding types of documents which may be filed with a delayed effective date. You may also contact our legal staff at (512) 463-5586 for further information regarding specific requirements.

### **Future Date**

In the case of a document stating a later date and time of effectiveness, the document must clearly and expressly set forth the time and date on which the document is to become effective. This information must be contained within the document itself rather than a cover letter or other unassociated writing. The date must be no more than 90 days from the date the document is submitted for filing and the time should be stated in hours and minutes (but not seconds) and cannot be stated as midnight (12 a.m.) or noon (12 p.m.).

### **Future Event**

Documents to be filed with a delayed effective date conditioned upon the occurrence of events, facts or actions by other persons or entities, must clearly and expressly set forth the manner in which the event or facts shall



operate to cause the filing to become effective. The document also must expressly state the date of the 90th day after the date of submission.

In addition, a statement must be filed with the secretary of state within the 90 day period stating that the condition has been satisfied or waived, and the date on which the satisfaction or waiver occurred. The statement is to be executed by each organization required to execute the document filed. The secretary of state has promulgated a [form](#) for this purpose.

The filing fee for a statement regarding a delayed effective date for a limited partnership document is \$25.00. The filing fee for a business corporation, professional corporation, and professional association is \$15.00. The filing fee for a limited liability company is \$10.00. The filing fee for a non-profit corporation is \$5.00.

**WE CANNOT CONSIDER INFORMATION CONTAINED IN COVER LETTERS TO DETERMINE WHETHER A DOCUMENT IS TO BE FILED WITH A DELAYED EFFECTIVE DATE.**

### **PENALTIES FOR SIGNING A FALSE DOCUMENT**

The Texas Business Corporation Act, article 10.02; Texas Non-Profit Corporation Act, article 1396-9.03A; the Texas Limited Liability Company Act, article 9.02; and the Texas Revised Partnership Act, section 13.08(b)(13), provide that if a person signs a document which the person knows is false in any material respect with the intent that the document be delivered to the secretary of state to be filed on behalf of a corporation, limited liability company, or registered limited liability partnership, the person has committed an offense. The offense is a Class A misdemeanor. The Texas Revised Limited Partnership Act, section 2.04(c), provides that the execution of a certificate or a written statement constitutes an oath or affirmation, under penalties for perjury, that, to the best of the executing party's knowledge and belief, the facts stated in the certificate or statement are true. Further, a person may be liable for damages under section 2.08 of the Texas Revised Limited Partnership Act if a certificate of limited partnership, or a certificate of amendment, merger, or cancellation contains a false statement or material omission, or is forged or is signed by a person not authorized by the partnership to execute the document.

Business & Commerce Code, section 36.27, provides that a person commits an offense if the person knowingly or intentionally signs and presents for filing or causes to be presented for filing an assumed name document that: (1) indicates that the person signing the document has the authority to act on behalf of the entity for which the document is presented and the person does not have that authority; (2) contains a material false statement; or (3) is forged. The offense is punishable as if it were an offense under the Texas Penal Code, section 37.10 (tampering with a governmental record).

### **FACSIMILE AND OTHER SIGNATURES**

The Texas Miscellaneous Corporation Laws Act, article 1302-7.07; the Texas Revised Limited Partnership Act, article 6132a-1, section 13.04; and the Texas Revised Partnership Act, section 3.08(b)(12), eliminate the requirement for original signatures on corporate, limited partnership, limited liability company and registered limited liability partnership documents by authorizing the use of facsimile signatures. The Assumed Business

or Professional Name Act, Section 36.18, Business and Commerce Code, eliminates the necessity of original signatures on an assumed name certificate filed with the secretary of state.

Corporate, limited liability company, limited partnership, assumed name, and registered limited liability partnership documents bearing the rubber-stamped signature of a person authorized by statute to sign the document will satisfy the execution requirements.

Corporate, limited liability company, limited partnership, assumed name, and registered limited liability partnership documents, as well as other documents submitted and filed electronically through the SOSDirect system bearing the typed signature of a person authorized by statute to sign the document will satisfy the execution requirements.

The secretary of state will accept documents signed by an attorney in fact. A power of attorney relating to the signing of the document by an attorney in fact need not be filed with the secretary of state.

### **PUBLIC INFORMATION**

Documents filed with the Corporations Section of the Office of the Secretary of State are public information and are subject to public access and inspection. If privacy issues are a concern, you should provide business address information rather than personal residence information when providing statutorily required information relating to the name and address of an officer, director, member, manager, or partner in a document to be filed with the Corporations Section of the Office of the Secretary of State or when providing similar information on a Public Information Report filed with the Texas Comptroller of Public Accounts.